

1 THE HONORABLE MARSHA J. PECHMAN  
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11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON  
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15 IN RE WASHINGTON MUTUAL  
16 MORTGAGE BACKED SECURITIES  
17 LITIGATION,  
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19

20 This Document Relates to: ALL CASES  
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22

23 Master Case No. C09-037 MJP  
24  
25 [Consolidated with: Case Nos.  
26 CV09-0134 MJP, CV09-0137 MJP, and  
27 CV09-01557 MJP]  
28

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30 **STIPULATED SUPPLEMENTAL  
31 CONFIDENTIALITY ORDER  
32 RELATING TO LOAN FILE  
33 PRODUCTIONS**  
34

35 Pursuant to Federal Rule of Civil Procedure 26 and Federal Rule of Evidence 502, and  
36 in the interest of efficiency and judicial economy, particularly in the interest of avoiding  
37 ancillary litigation over discovery issues relating to confidential or proprietary information or  
38 the production of privileged materials, the undersigned Plaintiffs and Defendants hereby  
39 stipulate and agree to this order and the procedures set forth herein for addressing the  
40 production of the privileged material described herein.  
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43 1. Non-waiver of Privileges. This Order is entered pursuant to Federal Rule of  
44 Evidence 502(d). In order to allow for expeditious production of loan file documents<sup>1</sup>  
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47 <sup>1</sup> These documents are distinct from those discussed during the December 19, 2011 telephonic hearing  
48 with the Court and not subject to the state privacy laws at issue at that hearing.  
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1 including voluminous servicing records sought in this matter which typically contain very  
 2 little if any privileged material, a Producing Party may, at its sole option, produce such  
 3 materials without detailed, or any, review to determine whether privilege or other privilege or  
 4 immunity from discovery applies to some of the documents produced. In accordance with  
 5 Federal Rule of Evidence 502(d) and other applicable Rules, disclosure in the course of  
 6 discovery of any document or information shall not be deemed to waive—in this litigation or  
 7 in any other Federal or State proceeding—any applicable privilege or immunity from  
 8 discovery that would otherwise attach to the document or information produced or to other  
 9 documents or information, including without limitation the attorney-client privilege, the  
 10 work-product doctrine, the joint defense or common interest privilege, personal privacy  
 11 protection, the bank examination privilege and the deliberative process privilege, regardless of  
 12 the extent (if any) to which the Producing Party has reviewed the document or information for  
 13 privilege or other protection. Likewise, where a Party has produced loan file documents in  
 14 another action, investigation, or other proceeding without detailed, or any, review to  
 15 determine whether privilege or other immunity from discovery applies, no Party shall claim  
 16 that production of such documents in such other action, investigation, or other proceeding  
 17 constitutes a waiver of any privilege or protection with respect to the documents produced.

19       2.       Clawback of Protected or Erroneously Produced Documents. The following  
 20 provision applies to all loan file documents produced in this action, and supersedes the  
 21 Stipulated Protective Order and Stipulated Order Regarding Clawback of Inadvertently  
 22 Produced Documents dated November 24, 2010 (Doc. 213) with regard to the production of  
 23 loan file documents, to the extent this provision and that Order conflict. Pursuant to Fed. R.  
 24 Evid. 502(d), if a Party (hereinafter, “Producing Party”) at any time notifies any other Party  
 25 (hereinafter, “Receiving Party”) that the Producing Party, for any reason, disclosed loan file  
 26 documents that are protected from disclosure under the attorney-client privilege, work product  
 27 doctrine, and/or any other applicable privilege or immunity from disclosure, or the Receiving  
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1 Party discovers such disclosure (in which case the Receiving Party shall give the Producing  
2 Party prompt notice), the disclosure, pursuant to Rule 502(d), shall not be deemed a waiver –  
3 in this litigation or in any other proceeding, including in Federal or State proceedings – of the  
4 applicable privilege or protection.

5 The Receiving Party shall upon request immediately return to the Producing Party or  
6 destroy all summaries or copies of such loan file documents, shall provide a certification of  
7 counsel that all such disclosed materials have been returned or destroyed, and shall not use  
8 such items for any purpose until further order of the Court. In all events, such return or  
9 destruction and certification must occur within five business days of receipt of the request.  
10 Within ten business days of the notification that the disclosed materials have been returned or  
11 destroyed, the Producing Party shall produce a privilege log with respect to the disclosed  
12 materials. The return of any Discovery Material to the Producing Party shall not in any way  
13 preclude the Receiving Party from moving the Court for a ruling that the disclosed  
14 information was never privileged; however, the Receiving Party cannot assert as a basis for  
15 the relief it seeks the fact or circumstance that such privileged documents have already been  
16 produced. Allegedly privileged documents shall remain protected against disclosure and use  
17 during the pendency of any dispute over their status. Nothing in this Order shall affect any  
18 Party's right to withhold from disclosure documents or information that are privileged or  
19 otherwise protected from disclosure.  
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21 Dated: January \_\_\_, 2012

22 Respectfully submitted,

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## ORDER

IT IS SO ORDERED.

Dated: \_\_\_\_\_

MARSHA J. PECHMAN  
UNITED STATES DISTRICT JUDGE

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record and additional persons listed below:

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